

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA., : Case No. 3:97CR074  
Respondent, : 3:06CV013

vs. : District Judge Walter Herbert Rice  
Magistrate Judge Sharon L. Ovington

MARGARITO FLORES, :  
Petitioner. :  
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**SUPPLEMENTAL REPORT AND RECOMMENDATIONS<sup>1</sup>**

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This matter is before the Court upon Petitioner's Notice of Filing Objections to Judgment and Notice of Due Process violation (Doc. #237) and Motion for Order to Deliver Magistrate Judge Report and Recommendations with a new ten day objection period. (Doc. #238).

In his pleadings, Petitioner explains that he did not receive a copy of the Report and Recommendations (Doc. #234) and did not know that it existed until he received a copy of the Court's final Judgment. (Doc.'s #235, #236).

Upon investigation, it appears likely that Petitioner did not receive a copy of the Report and Recommendations. Accordingly it is respectfully recommended that the Court's final Judgment (Doc.'s #235, #236) be vacated and that Petitioner's § 2255 Motion be reinstated on the docket of this Court. It is further recommended that Petitioner's Motion for Order to Deliver Report and Recommendations (Doc.#238) be granted and that the Clerk of this Court be ordered

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendations.

to send a certified copy of the Report & Recommendations (Doc. #234) along with a copy of the instant supplemental Report & Recommendations to Petitioner forthwith. The ten day time period for the filing of objections to the Report and Recommendations (Doc. #234) should begin to run upon Petitioner's receipt of an order, in the event that District Judge Walter Herbert Rice adopts this Supplemental Report and Recommendation, re-opening the § 2255 petition as recommended herein.

**IT IS THEREFORE RECOMMENDED THAT:**

1. Petitioner's Motion for Order to Deliver Report and Recommendations with a new ten day objection period (Doc.#238) be GRANTED; and,
2. The Court's final judgment be vacated and the case be re-opened on the docket of this Court.

March 6, 2006

s/ Sharon L. Ovington  
Sharon L. Ovington  
United States Magistrate Judge

## **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).